

1108CARR

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1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

4 THE UNITED STATES OF AMERICA,  
5 ex rel., ANDREW M. GARNER, III,  
6 and ANDREW M. GARNER, III,  
Individually,

7 Plaintiffs

8 vs.

CASE NO.: 1:00CV463

9 ANTHEM INSURANCE COMPANIES,  
et al.,

10 Defendants.

11 /

12 CONFIDENTIAL

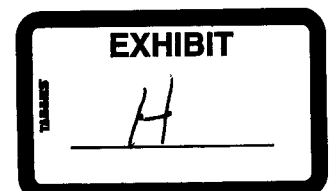
13  
14 ROUGH DRAFT  
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17 The deposition of KATHLEEN CARROLL, taken by the  
18 attorney for the Plaintiffs, commencing at approximately  
19 1:10 p.m., on the 8th day of November 2005, at 125 West  
20 Romana Street, Pensacola, Florida, before Connie L. Morse,  
21 Registered Professional Reporter and Notary Public at Large  
22 in and for the State of Florida.  
23  
24  
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1 APPEARANCES

2 FOR THE PLAINTIFFS: PAUL B. MARTINS, ESQUIRE  
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21                   Q       1108CARR And that would be the next day, February 20,  
22       1998?  
23                   A       Correct.  
24                   Q       I forgot to say if you ever need a break, just  
25       say so.

28

1                   A       Thank you.  
2                   Q       Okay.  
3                            (Pleading's Exhibit 9 was marked for  
4       identification.)  
5                   Q       (By Mr. Martins) I've handed you what's  
6       marked as Plaintiff's Exhibit No. 9. It is a sheet dated  
7       April 2, 1998. At the top it's typed Jim Garner. Do you  
8       see that?  
9                   A       Yes.  
10                  Q       Is this one of the documents that you were  
11       shown in preparation for the deposition?  
12                  A       Yes.  
13                  Q       And explain to me what this is.  
14                  A       This appears to be an outline of discussion of  
15       meeting that was held with Jim with regard to his  
16       suspension.  
17                  Q       Were you involved in drafting this document?  
18                  A       I don't recall exactly. I probably worked  
19       with Fred Brown on it.  
20                  Q       Do you recall whether it was prepared before  
21       meeting with Mr. Garner or after meeting with Mr. Garner?  
22                  A       No, it would have been done before meeting  
23       with Mr. Garner.  
24                  Q       Okay. And so this is a guide, if you will, of  
25       topics to cover with Mr. Garner?

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1 A Correct.

2 Q And as I understand your testimony, you're  
3 unsure whether or not you worked with Mr. Brown in preparing  
4 this document?

5 A Correct.

6 Q would it have been your practice to be  
7 involved at this level in preparing this checklist for Mr.  
8 Garner's suspension?

9 A Yes.

10 Q The first item, aware of an internal audit  
11 review underway, do you recall what that relates to?

12 A well, there was an internal audit being done,  
13 and -- so it's just a statement of fact.

14 Q what was the internal audit?

15 A The internal audit department was conducting  
16 an audit of something in FEP.

17 Q Do you have any knowledge of what that was?

18 A Not really. It wouldn't have been any of my  
19 business, really.

20 Q Is there a reason why this would be listed on  
21 a checklist for a meeting with Mr. Garner to advise him that  
22 he was under suspension?

23 A well, because of the second bullet, two  
24 instances wherein appropriate comments to staff were made  
25 regarding the audit and other matters.

30

1 Q What were the inappropriate comments?

2 A I don't remember. I don't know.

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3 Q At the time did you, as of April 2 or before  
4 that, were you aware of inappropriate comments to the staff  
5 regarding the audit and other matters?

6 A I would have been made aware of them by, more  
7 than likely, Kathy Hinkle.

8 Q Do you have any recollection as you sit here  
9 today of such an either conversation or an e-mail or some  
10 communication between Ms. Hinkle and you concerning  
11 inappropriate comments?

12 A It would have been, in all probability, a  
13 conversation where she would have brought the concerns and  
14 her issues to my attention.

15 Q What I'm asking, you said it would in all  
16 likelihood be or something or in all probability it would  
17 have been. What I'm asking is, do you have any recollection  
18 of such a conversation with Ms. Hinkle?

19 A Yes.

20 Q Before this document, Exhibit 9, was drafted?

21 A Yes.

22 Q What do you recall about the conversation with  
23 Ms. Hinkle?

24 A Kathy came to me and discussed with me that  
25 Jim had been making some inappropriate comments, that she

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1 had asked him and counseled him to refrain from making such  
2 statements and comments, that they were interfering with  
3 morale, and she didn't want any interference with the audit,  
4 they were not appropriate for management, and so she  
5 counseled him that his actions were inappropriate, were  
6 unprofessional, and she wanted him to stop.

7 Q When did Ms. Hinkle have this conversation  
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8 with you?

9 A I'm not sure.

10 Q Do you recall was this face to face or by  
11 phone?

12 A I don't recall, probably both.

13 Q Do you recall if this was a day before April 2  
14 or a week or a month?

15 A No, I don't.

16 Q Do you recall where you were when you had the  
17 conversation with Ms. Hinkle?

18 A No, I don't.

19 Q At this time your office would have been  
20 located in Mason, correct?

21 A Correct.

22 Q And if I understand things correctly, Mr.  
23 Garner and Ms. Hinkle's office would have been at William  
24 Howard Taft?

25 A Correct.

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1 Q Do you recall whether or not you went down to  
2 William Howard Taft to meet with Ms. Hinkle or whether she  
3 came to Mason to meet with you when you discussed this  
4 matter?

5 A No, I don't.

6 Q Do you recall what Ms. Hinkle was wearing?

7 A No.

8 Q Do you recall what you were wearing?

9 A No.

10 Q Okay. Did Ms. Hinkle tell you what the  
11 statements were that she considered inappropriate?

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12 A I'm sure she did, but I don't remember what  
13 they were.  
14 Q Did you write down what the statements were?  
15 A I don't know.  
16 Q Did you then, having received this  
17 communication from Ms. Hinkle, did you initiate some sort of  
18 investigation to determine whether or not Mr. Garner was, in  
19 fact, making whatever the inappropriate comments?  
20 A At this point in time, what Ms. Hinkle was  
21 informing me of was that the comments had been made and  
22 these couple of instances, she had counseled him, and after  
23 that point in time he continued to make inappropriate  
24 comments. I looked into for sure the Mary O'Rourke piece,  
25 so I did that piece of that investigation. But in terms of

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1 other -- of what had occurred that had caused her to counsel  
2 him in the first place, I don't recall enough of the detail  
3 about that. I don't recall any detail.  
4 Q Do you know whether or not this counseling  
5 that Ms. Hinkle told you she provided to Mr. Garner was in  
6 writing or oral?  
7 A No, I don't.  
8 Q To your knowledge, was there ever any  
9 discussion of a possible written reprimand or written  
10 counseling to Mr. Garner?  
11 A Prior to this meeting, I'm not aware of any,  
12 no.  
13 Q Was there any attempt on your part to talk  
14 with Mr. Garner to find out his side?  
15 A Well, he was told in this meeting that he  
16 should contact me if there was anything that he thought we,

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17 Anthem, needed to know or that he needed to say.

18 Q This is the meeting where he's informed that  
19 he's been suspended, right?

20 A That is correct.

21 Q I'm asking before the suspension, when you  
22 talked with Ms. Hinkle and she says he's making  
23 inappropriate comments, I know you said you can't remember  
24 what the comments were or if she told you what the comments  
25 were, but setting that aside, when she tells you that he's

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1 making inappropriate comments, did you attempt to contact  
2 Mr. Garner to get his side of it?

3 A That wasn't necessary.

4 Q Why not?

5 A She had counseled him on the first couple of  
6 instances, and they had had a discussion with regard to  
7 that. After that point in time, when he continued to make  
8 comments that were inappropriate, I got the investigation  
9 going in terms of the Mary O'Rourke piece, so I had  
10 validation of the fact that that was true. And in this  
11 meeting he had an opportunity to make any statements, tell  
12 his side of the story, and he had the opportunity after this  
13 meeting to contact me and tell his side of the story and was  
14 invited to do so.

15 Q Am I correct in understanding that what you've  
16 just said as far as him being counseled and him not  
17 following the counsel is based upon what Ms. Hinkle told  
18 you?

19 A Only partially based upon what she told me  
20 because I went and looked into the comments that he made to

21 Mary and verified them. 1108CARR

22 Q To Ms. O'Rourke?

23 A Correct.

24 Q Other than looking into the comments made to  
25 Ms. O'Rourke, did you do anything else?

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1 A I don't recall if I talked to anybody else.

2 Q Do you recall ever approaching Mr. Garner  
3 before April 2, 1998, to get his side of it?

4 A No, I don't recall.

5 MR. DYER: Asked and answered. Now you can  
6 answer. When I make an objection, I'm making a  
7 record. Then you can go ahead and answer unless I  
8 were to tell you otherwise, and I will only do that  
9 if it's privileged.

10 THE WITNESS: Okay. I don't remember the  
11 question.

12 MR. DYER: That happens when lawyers start  
13 talking.

14 MR. MARTINS: Just lawyer noises that we make.

15 Q (By Mr. Martins) Before April 2, 1998, did  
16 you talk with Mr. Garner to get his side of it?

17 A I don't remember doing that. I may have. I  
18 may not have.

19 Q When Ms. Hinkle either came to you or spoke to  
20 you by phone reporting this complaint about Mr. Garner  
21 making inappropriate comments, did you discuss with her the  
22 option of some lesser administrative action rather than  
23 suspension?

24 A I don't recall.

25 Q Just so that we're clear, lesser actions would  
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1 include such things as a written reprimand, poor evaluation  
2 of some sort, some sort of written record or even an oral  
3 reprimand by maybe somebody, Ms. Gross or somebody like  
4 that?

5 A I don't recall. But it's important to  
6 remember that this suspension was with pay. It wasn't  
7 disciplinary suspension from the standpoint of he wasn't  
8 doing his technical job. This was primarily to get him away  
9 from the workplace to stop the comments, stop the confusion  
10 of the -- the uproar, the disruption that was occurring due  
11 to his behaviors.

12 Q Did you know that there was an uproar?

13 A You know, I should take back the uproar. It  
14 was disruption; it was people being upset, concern about the  
15 fact that he wasn't following management directives. It was  
16 insubordination. There was a need to remove him from the  
17 workplace to have some time to really think through what's  
18 the right thing and to give Jim the opportunity to pick up  
19 the phone and call if there was something that we needed to  
20 know, which as far as I recall didn't happen.

21 Q All of what you've said just now is based on  
22 what you got from what Ms. Hinkle told you and what you got  
23 concerning the O'Rourke issue; is that right?

24 A And talking with Lynn Gross. It wasn't all  
25 Kathy's decision. It was primarily operating management's

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1 decision, but it would have been Lynn Gross' ultimate  
2 decision.

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3 Q Did you ever hear that Mr. Garner was  
4 complaining that the FEP program was failing to pass on  
5 rebates that it should be providing to the government?

6 A No.

7 Q Did you ever hear that Mr. Garner had been  
8 complaining that there were overcharges and either --  
9 overcharges of expenses or administrative expenses to the  
10 government under the FEP program?

11 A No.

12 Q Did you ever hear that he was looking into  
13 those matters?

14 A No.

15 Q Do you know a Mr. Jensen, a Michael Jensen?

16 A I recall the name.

17 Q Do you recall that he was a compliance person  
18 at the FEP marketing?

19 A I honestly don't remember what he did.

20 Q I take it in conducting your investigation or  
21 in doing whatever you did from a human resources standpoint  
22 for the suspension and then the termination, I take it you  
23 did not discuss anything with Mr. Jensen?

24 A I don't recall discussing anything with him.

25 Q Do you recall having any discussion with

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1 anyone in management about a lesser form of administrative  
2 punishment for Mr. Garner?

3 A Lesser form meaning the suspension or the  
4 termination?

5 Q At the suspension level, when you got to the  
6 point of you were going to bring him in on April 2 and tell  
7 him he was suspended, leading up to that, was there any

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3 O'Rourke concerning a racism complaint?

4 A I don't recall, but my normal operating  
5 procedure would be if I got a complaint of any kind, racism  
6 or harassment or whatever, would be to investigate to some  
7 extent.

8 Q And my follow-up question to that is do you  
9 have a recollection of conducting an investigation after  
10 hearing about this from Ms. O'Rourke into this issue of  
11 racism?

12 A I just don't recall.

13 Q Do you have a recollection of conducting an  
14 investigation into any of the matters listed here based upon  
15 the oral conversation that you had with Ms. O'Rourke?

16 A I just don't remember.

17 Q The last paragraph talks about intimate  
18 relationships. You see that?

19 A Yes.

20 Q Again, do you have any recollection of in the  
21 oral conversation you had with Ms. O'Rourke a discussion of  
22 intimate relationships?

23 A I don't remember.

24 Q I want to turn back to Exhibit 9. And you can  
25 keep 10 there in front of you.

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1 A Okay.

2 Q There's a bullet point, "Comments to a Julie  
3 Townsend in Louisville."

4 A Yes.

5 Q Do you recall what that relates to?

6 A I don't.

7 Q There's a next bullet point, "Most recently  
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8 comments you made to Mary O'Rourke about taking Kathy down  
9 with you." Do you recall what that relates to?

10 A Well, it relates to the report from Mary  
11 that's documented in this Exhibit 10.

12 Q At the time this Exhibit 9 was prepared, these  
13 bullet points, do you recall whether or not that statement  
14 was entered there based on what Ms. Hinkle told you, or was  
15 it based on what O'Rourke told you?

16 A I don't recall.

17 Q The next bullet point is, "We can't have a  
18 member of management making such comments. Disruptive to  
19 the staff, impedes the audit process being conducted." Do  
20 you see that?

21 A Yes.

22 Q Do you have any recollection of a discussion  
23 with anyone before April 2, 1998, concerning this matter?

24 A Well, yes. I would have talked primarily to  
25 Lynn but also to Kathy, as well as Fred, Kathy Hinkle, Fred

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1 Brown, because this was the whole construction of the matter  
2 was that Mr. Garner was being insubordinate, going against  
3 the directives of his management; his comments were being  
4 disruptive to the staff; he was told to cooperate with the  
5 audit. There was concern that his actions were impeding it.  
6 So this was the bottom line as to why the action was being  
7 taken.

8 Q Do you have a recollection, as you sit here  
9 today, of such a discussion before April 2, 1998?

10 A I would have had to have had it with Lynn,  
11 Kathy, et cetera.

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12 Q And you're saying that just because, I mean,  
13 that's how it would have to then result in this memo?

14 A Well, I don't see how it could have been part  
15 of the meeting outline if that whole subject had not been  
16 discussed.

17 Q And my question is, do you have a recollection  
18 of that conversation before April 2, '98, before Mr. Garner  
19 is brought in and suspended?

20 A Yes, I spoke with both Kathy and Lynn about  
21 that.

22 Q You have an independent recollection of that?

23 A I think so. It's hard to remember that far  
24 away.

25 Q Okay. As I understand your testimony, you're

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1 unsure whether or not you drafted what is Exhibit 9,  
2 correct?

3 A That is correct. I don't know if I did it,  
4 Fred did it, the two of us did it together.

5 Q And so if someone else drafted it, they may  
6 have put this information down without you having had such a  
7 conversation; is that right?

8 A I would be very surprised. It would be  
9 bordering on impossible.

10 Q Why is that?

11 A Well, for one thing, the way Fred and I  
12 worked, we worked together on a lot of things, and my name  
13 was in it as to a person that he was to contact. So I  
14 certainly would have known about it even if I wasn't  
15 intimately involved in putting the words on paper. But they  
16 sure look familiar.

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17 Q The meeting with Mr. Garner on April 2, 1998,  
18 took place at Mason; is that right?

19 A I believe it took place in Lynn's office, Lynn  
20 Gross' office.

21 Q The Mason office?

22 A Correct.

23 Q And were you present for that meeting?

24 A I'm told it was Fred who was at that meeting.  
25 I was at the termination meeting.

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1 Q Okay. Do you have a recollection of whether  
2 or not you were or were not at that meeting?

3 A No.

4 Q The suspension meeting?

5 A No. I don't remember, certainly don't  
6 remember being there.

7 Q You just told me I'm told I was there?

8 A No. I was told I was not, that it was Fred  
9 who handled that meeting.

10 Q Oh, that you were not there. I don't want to  
11 get into what the attorneys told you. Did anyone else tell  
12 you that you were not at this meeting?

13 A No, but then I haven't spoken to anyone else.

14 Q Okay. The next bullet point is, "As a result,  
15 we are suspending you effective immediately with pay. We  
16 will call you when it is appropriate regarding your  
17 returning to work." Do you see that?

18 A Yes.

19 Q Do you recall whether or not Mr. Garner was  
20 ever called concerning it being appropriate for him to

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21 return to work?

22 A As far as I know, he was contacted to come in  
23 for the April 7th meeting. I don't believe he was contacted  
24 at any other point between the 2nd and the 7th.

25 Q What is the April 7th meeting?

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1 A The termination meeting.

2 Q Okay. Even though you weren't at this  
3 suspension meeting, I understand that if we look down at the  
4 second to last bullet point, your name is given as the point  
5 of contact?

6 A Correct.

7 Q Did you ever contact Mr. Garner?

8 A Not that I recall. He was asked to contact me  
9 if there was anything that he felt we needed to know, should  
10 know, et cetera.

11 Q And I take it since you were not at the  
12 suspension meeting, you're unsure what exactly was said  
13 between whoever was there and Mr. Garner; is that right?

14 A I'd say that's right.

15 Q When you spoke to Ms. O'Rourke, whenever that  
16 was, did you either personally conduct an investigation or  
17 cause an investigation to be conducted based on what Ms.  
18 O'Rourke had told you?

19 A I don't recall.

20 Q Based on your years of human resources  
21 experience, would you expect that before suspending or  
22 terminating an employee, particularly somebody that had a  
23 good performance record with the company, that good human  
24 resources practices would have been to conduct such an  
25 investigation?

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1 MR. DYER: I'm unsure who's investigating  
2 what. We've had like three levels of investigation  
3 discussed. Could you clarify the question, please,  
4 Paul.

5 MR. MARTINS: Sure, sure.

6 Q (By Mr. Martins) Based on your years of  
7 experience and based on the information given to you by Ms.  
8 O'Rourke and Ms. Hinkle, and my understanding is that's the  
9 sum total of the information that was given to you, correct?

10 MR. DYER: Object, misstates her testimony.

11 THE WITNESS: I also spoke with Lynn.

12 Q (By Mr. Martins) Ms. Gross?

13 A Correct.

14 Q Anything else?

15 A I counseled with Fred Brown and others that I  
16 needed to counsel with, but I don't remember who everybody  
17 was.

18 Q Okay. Do you agree that good human resources  
19 practice would be before terminating an employee who has the  
20 performance and potential documented in the evaluations that  
21 we've covered that there should be some investigation into  
22 the allegations before there is a termination?

23 A Well, there's really two separate issues going  
24 on here. We were investigating the appropriateness of  
25 action that the management -- that the operating management

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1 wanted to take in terms of Mr. Garner's actions, and so yes,  
2 I agree with you that good human resource practice is to



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3 conduct an appropriate investigation before taking action.  
4 The allegations that he made in this memo from Mary to me  
5 don't have anything to do with the reasons why Anthem took  
6 the action it did with him.

7 Q When you say from Mary to me, you're referring  
8 to Exhibit 10?

9 A Correct.

10 Q So am I correct in understanding that the  
11 allegations reported to you by Ms. O'Rourke in Exhibit 10  
12 play no part in the decision of Anthem to either suspend or  
13 terminate Mr. Garner?

14 MR. DYER: Can you clarify which allegations.  
15 There's three sets of them.

16 MR. MARTINS: All of them.

17 MR. DYER: You can go ahead.

18 THE WITNESS: And I'm trying to answer  
19 your question. If I don't, I'm sure you'll tell me.  
20 Part of my role in working with Lynn Gross and Kathy  
21 Hinkle and others on this situation with Mr. Garner  
22 was to assess the extent to which it made sense to  
23 take appropriate action with regard to him. The  
24 actions and comments and behaviors that he was  
25 exhibiting were the things I was looking into. Any

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1 allegations that he made in these statements to Mary  
2 would have been a whole separate investigation and  
3 wouldn't have had anything to do with whether action  
4 was taken with regard to him. Does that make sense?

5 Q (By Mr. Martins) I think I'm following what  
6 you're saying. So what is reported in Exhibit 10 plays no  
7 part in the decision of Anthem to terminate Mr. Garner; is

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8 that right?

9 MR. DYER: Objection.

10 THE WITNESS: what do you mean by what is  
11 reported?

12 Q (By Mr. Martins) The items that are covered  
13 in Exhibit 10, the memo from Ms. O'Rourke to you, if I'm  
14 understanding your testimony, played no part in the decision  
15 of Anthem to terminate Mr. Garner?

16 A The fact that he would bring up concerns of  
17 racism or inappropriate relationships absolutely had nothing  
18 to do with his termination. The fact that he chose to  
19 discuss his concerns with a direct report of Ms. Hinkle's  
20 and stated that, if I go down I'm taking her down with me,  
21 among other comments, those were the things that led to his  
22 termination. It was appropriate for him to bring these  
23 kinds of concerns, if he had them, to management or human  
24 resources. It was not appropriate for him to discuss these  
25 kinds of things with subordinates of his own manager.

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1 Q Did you conduct an investigation, or are you  
2 aware of whether Anthem conducted an investigation as to  
3 whether or not Mr. Garner actually said to Ms. O'Rourke, if  
4 I go down Kathy Hinkle will be going down with me?

5 A I conducted that from the standpoint of the  
6 first place that was reported to me was Kathy Hinkle because  
7 Mary went directly to her and was quite upset about it, and  
8 then I sat down with Mary and had her tell me what had  
9 happened and then asked her to follow up with this. I had  
10 no reason to disbelieve that she was telling me the truth.

11 Q Did you ever think to ask Mr. Garner if he had

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12 said that before you made your determination?  
13 A Well, it was discussed with him in this April  
14 2nd meeting.  
15 Q No, no. I'm asking from your standpoint.  
16 A Mr. Garner never -- no, I did not initiate  
17 conversation with him about it, and he did not contact me as  
18 he was asked to.  
19 Q Let's go as to the second paragraph in Exhibit  
20 10, the racism issue. Did that play any part in Mr.  
21 Garner's termination?  
22 MR. DYER: Objection.  
23 Q (By Mr. Martins) In the decision of Anthem to  
24 terminate Mr. Garner?  
25 MR. DYER: Object to the form of the question,

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1 and it's asked and answered.  
2 Q (By Mr. Martins) You may answer.  
3 A As I said before, the fact that he brought a  
4 concern of racism had absolutely nothing to do with his  
5 termination. The fact that he made inappropriate comments  
6 to a subordinate did have to do with his termination.  
7 Q Just so that we're clear, the subordinate  
8 you're referring to here is Ms. O'Rourke?  
9 A Correct.  
10 Q Again, with respect to this, as I understand  
11 it, you did not talk with Mr. Garner to determine whether or  
12 not he had such a conversation with Ms. O'Rourke; is that  
13 correct?  
14 A I don't recall.  
15 Q Are you aware that Mr. Garner and Ms. O'Rourke  
16 were friends?

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17 A No.

18 Q Are you aware that Ms. O'Rourke does not  
19 recall ever talking to you about these matters?

20 A Jim, I believe, said earlier today that she  
21 doesn't remember having a conversation with me.

22 Q Okay. Other than that, are you aware that Ms.  
23 O'Rourke has no recollection of talking with you about this?

24 A I mean, am I aware that she doesn't remember  
25 anything? I wouldn't have any reason to be aware that she

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1 doesn't --

2 Q Well, okay. It's more specific than that.

3 A Okay.

4 Q Are you aware that Ms. O'Rourke has no  
5 recollection of talking with you about this matter, the  
6 matters in Exhibit 10?

7 A I still don't know what you're asking.

8 MR. DYER: Why don't you ask it another way  
9 around, did she have the conversation.

10 MR. MARTINS: Well, okay.

11 MR. DYER: She can't know what Mary knows or  
12 doesn't know if she hasn't talked to Mary, so I  
13 object to the form.

14 Q (By Mr. Martins) With respect to third item  
15 in Exhibit 10, the intimate relationships allegations, do  
16 you have -- as I understand your testimony, you did not  
17 discuss this with Mr. Garner, correct?

18 A Not that I'm aware of.

19 Q This reference to an underlying investigation  
20 with Sue Ulrey, do you see that?

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21 A Yes.

22 Q Are you aware that Anthem did this, conducted  
23 this investigation and cleared Mr. Garner of any wrongdoing  
24 in the underlying investigation?

25 A In the -- pardon me?

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1 Q In the underlying investigation, the  
2 investigation that Ms. Ulrey was conducting.

3 A I knew an investigation was going on. I'm not  
4 sure I knew the outcome of it. I may have by the time we  
5 were meeting with him in April. But it didn't matter  
6 because his termination, again, didn't have anything to do  
7 with the investigation.

8 Q Did Ms. Hinkle indicate to you whether Mr.  
9 Garner spoke to anyone else besides Ms. O'Rourke?

10 A At any point in time?

11 Q Well, concerning -- you have the memo from Ms.  
12 O'Rourke, and you have concerning I guess this inappropriate  
13 conduct by Mr. Garner in talking to subordinates, right?

14 A Correct.

15 Q That relates to Ms. O'Rourke; you've already  
16 explained that?

17 A Well, as you can see on this April 2nd memo,  
18 there were a couple of instances that she, she being Kathy  
19 Hinkle, met with him about and a comment to a Julie Townsend  
20 and then these comments to Mary O'Rourke.

21 Q Are you aware of whether Mr. Garner as alleged  
22 to have spoken to anyone else besides Ms. O'Rourke?

23 A I thought I just answered that.

24 MR. DYER: Also earlier in her testimony as  
25 well, so object, asked and answered.

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8 in no way --" you have "no way" underlined, "connected with  
9 outcome of investigation." what investigation are you  
10 referring to?

11 A That would have been the Sue Ulrey internal  
12 investigation.

13 Q And as I understand your testimony, you are  
14 not aware that Mr. Garner was cleared in that investigation;  
15 is that right?

16 A I don't recall.

17 Q Certainly at the time you wrote Exhibit 11,  
18 did you know -- I'm sorry. Did you inquire as to whether  
19 the investigation being conducted by Sue Ulrey had been  
20 concluded?

21 A I don't recall.

22 Q The next bullet point is, "Anthem has decided  
23 to terminate your employment." You wrote that, and then did  
24 you pass that on to Ms. Gross?

25 A She had this whole piece of paper where she

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1 had the part where she was supposed to start the meeting at  
2 the top.

3 Q So this in effect is a script for Ms. Gross?

4 A It's an outline. It's not that she's expected  
5 to say this exactly the way. This was just normal thing I  
6 would do to help a manager through a meeting.

7 Q The third item is, "Recent actions on your  
8 part have demonstrated poor judgment, decision making and  
9 professionalism." what did you mean by that?

10 A We wanted it to be as clear as possible to Mr.  
11 Garner exactly why he was being terminated. It had to do

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12 with we wanted him to be clear that it didn't have anything  
13 to do with the investigation, but it did have everything to  
14 do with his behavior, his judgment in terms of talking with  
15 people, decision making in terms of talking with people  
16 after he was told not to, the insubordination, you know,  
17 lack of following management direction and, you know, the  
18 whole professionalism that you expect of a member of your  
19 management team. And he was not demonstrating the level of  
20 professionalism that's expected of a manager.

21 Q And am I correct in understanding that at the  
22 time you wrote this, you had not talked with Mr. Garner to  
23 get his side of it, right?

24 A I don't believe he contacted me, no.

25 Q And you did not contact him?

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1 A No. He was told to contact me.

2 Q At least that's what's on that prior form?

3 A And I believe he was told that.

4 Q But you weren't at that meeting?

5 A No.

6 Q You said the poor judgment is demonstrated by  
7 the continued talking with people, and the people that  
8 you're referring to would be Ms. O'Rourke and Ms. Townsend?

9 A At least, yes.

10 Q Did you at this point in time when you wrote  
11 Exhibit 11, had you talked with Ms. Townsend?

12 A I don't recall.

13 Q Do you know whether or not anyone had  
14 investigated or, I'm sorry, had talked with Ms. Townsend?

15 A I don't recall.

16 Q Insubordination, you used that term. What was  
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17 the insubordination?

18 A Well, specifically, Kathy Hinkle had counseled  
19 him with regard to the inappropriate comments he was making  
20 and directed him to stop making inappropriate comments that  
21 she felt were hurting morale, possibly interfering with the  
22 audit, and she specifically told him don't do that kind of  
23 -- you know, don't conduct yourself with that kind of  
24 behavior. And he went out and did exactly what she told him  
25 not to do and bad-mouthed her.

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1 Q This is based on what Ms. Hinkle told you?

2 A And supported by Mary O'Rourke.

3 Q "Resulting in lack of confidence by  
4 management." That's the last bullet point. What was the  
5 lack of confidence?

6 A Well, it would have -- lack of confidence  
7 would be the inability to trust that he'll carry out  
8 directives, act in a professional manner, make good  
9 decisions, use good judgment. Those were the things that  
10 caused his leaving the company.

11 Q This was a man who for six years and nine  
12 months had demonstrated good judgment, good performance for  
13 the company, good leadership. Was there any discussion  
14 before meeting with Mr. Garner to cover the matters in  
15 Plaintiff's Exhibit 11 to discuss some other alternate  
16 position to take rather than termination?

17 MR. DYER: Object to the form of the question.  
18 You may answer.

19 THE WITNESS: I'm confident that we held  
20 those discussions because we had several days in